

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19

FOOD SERVICES OF AMERICA, INC.

Employer

and

Case 36-UC-283

TEAMSTERS LOCAL UNIONS #206  
and 962, affiliated with THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS

Petitioner

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>1</sup> in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Petitioner/Union is a labor organization within the meaning of the Act, and claims to represent certain employees of the Employer.

**Issue**

Food Services of America, Inc., is a State of Washington corporation engaged in providing food products to commercial customers in Portland, Oregon. Petitioner ("Union" or "Petitioner") jointly represents the Employer's warehouse and driver employees ("Unit"). Local 206 separately represents the Employer's office clerical employees ("Clerical Unit"). The two resulting labor agreements run concurrently, from April 3, 1998 through April 4, 2003.

Unit employees consist of:

All warehouse and driver employees of the Employer in the Employer's Oregon facilities, including warehouse, will-call order filler, lift truck driver, freezer employees, loader employees, semi-truck and trailer drivers,

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<sup>1</sup> Briefs were received from the parties and considered.

shipping clerks, receiving clerks, inventory control clerks, hostlers, restricted duty employees, express delivery employees and equipment maintenance employees; excluding all other employees, guards and supervisors as defined in the Act.

Petitioner seeks clarification of the Unit to include a newly created classification known as financial inventory auditors (FIA), because these employees perform the same basic functions historically performed by members of the Unit. More specifically, Petitioner contends that the FIA employees perform essentially the identical work that was performed by the inventory control clerks (ICC) employees. Additionally, the Union maintains that the terms of employment and working conditions between the FIA employees and the rest of the Unit are similar.

The Employer contends that the two FIAs, Kelley Allensworth and Gary Quinn, do not share a community of interest with the Unit, and in fact, are in a working environment that makes them adverse to the Unit. According to the Employer, both FIAs are empowered to act with great discretion in the performance of their duties and are responsible for policing the activities of Unit employees as well as branch-level managers. Thus, the Employer contends that the FIAs' independence from Unit employees and management is essential to their position. Therefore, the Employer argues that this petition should be denied, or in the alternative, deemed to be premature as the FIA position has not yet been fully developed.

### **Pre-Change Setup<sup>2</sup>**

The following individuals held conceded supervisory positions with the Employer: Mike Elliott, Vice President for Operations; Dave Simanton, Vice President of the Finance Department; and Kelly Kenny, Warehouse Manager. [The record does not reflect the identity, location or role of the President or individual to whom the vice-presidents report.]

The Employer's Portland warehouse carried dry groceries, deli and dairy items, frozen food and produce. There were two areas in the warehouse. The first ("order section") was set up for employees to pick individual customer orders. The products in this section were housed in slots, and included the Employer's full product line. The majority of the warehouse contents were held in an area of the warehouse designated as overstock ("overstock section"). These products were used as reserves, for replenishing the order section.

Unit warehouse employees received incoming goods and stowed them in the overstock area. As needed, they transferred Units of these items to the order section, where customer orders were pulled, stacked and then loaded onto the Employer's delivery trucks. Unit drivers delivered the goods to customers, and hauled any returns back to the warehouse.

Employees in the Clerical Unit, supervised by Simanton, handled accounts payable and accounts receivable. The Clerical Unit also included a receptionist, "general office" personnel, and computer operators. The record does not indicate how orders were taken from customers, or the presence of a sales force. There were buyers, who apparently were unrepresented. The produce quality control employees, who reported to Simanton, were unrepresented.

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<sup>2</sup> This section is set forth in the past tense, as it describes the pre-change system. Most of this pre-change system, described below, remained unchanged after the March 2002 FIA changes.

In 1987, the Employer created the ICC position and hired Dan Vargo, then a warehouseman and a Unit member. According to the Employer, the ICC position was created as a non-bargaining Unit position, but converted to a Unit position upon the Union's petition for clarification. Vargo, when he held the position, worked from several documents including the warehouse "short report", which showed all the items audited and orders from the previous night that could not be found in inventory. Vargo conducted daily "random"<sup>3</sup> audits on items in order to resolve these discrepancies in inventory. Vargo was eventually promoted to the position of Quality Control Manager, a non-unit position.

Timothy Bird then became an ICC. The physical space used to store goods doubled between 1986 and 2000; as a result, sales increased and the ICC slots grew to two. Gary Schmirler became the second ICC.

Bird controlled all the slotting of incoming merchandise into the warehouse, as well as credits and returns, and entered related data into the computer system. He worked with the accounting and credit departments on purchase order and credit problems involving discrepancies. His duties also included working on the warehouse short report each day, which showed all "missing" items in the order section from the night before that could not be replenished from the overstock section. He made a note on the warehouse short report as to whether the items could be found. Bird then performed an adjustment of some kind for items not available from the overstock inventory, before turning over the sheet to data processor Mark Peacock for processing. Bird might continue to look for some large quantity adjustments "for weeks".

Bird also conducted a "zero inventory" check, i.e., when an item was reported being totally out of stock, he checked to verify if that were true.

Bird also addressed daily inventory problems that were called in by drivers or the sales representatives, such as "shorts"<sup>4</sup>. He checked the inventory to let the driver know if the missing product was still at the facility and whether the customer should be credited for the missing item. When Bird prepared to do an audit or "random" audit, he generally printed a list of items for the purpose of verifying the inventory in a particular section of the warehouse. This list might have included high volume as well as high value items such as fresh meat.

Bird performed about 50 percent of his work in the warehouse and 50 percent in his cubicle. He had a desk and cubicle located on the dry grocery dock in the operations department office, about three feet from the warehouse floor. About five weeks of the year, while Bird was on vacation, Gary Schmirler, the other ICC employee, worked on the warehouse short reports.

There was testimony by Schmirler and Vargo that ICCs performed "random audits" of warehouse stock. Testimony showed that what they meant was that if a significant error, or perhaps group of errors, were found in the warehouse, an ICC could elect to investigate the exact scope of the error. Thus, he might make inventory checks to see if there were other related errors regarding the same incoming shipment, or the same area of the warehouse. These counts were always prompted by a particular problem or series of known problems; the items for review were not selected totally by chance. Thus, they were *not* "random".

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<sup>3</sup> His choice of wording.

<sup>4</sup> Items supposedly on the truck to fill an order, but missing on delivery.

Prior to March 2002, the Employer performed semi-annual audits<sup>5</sup> of its inventory. The most recent audit began on January 20, 2002. These audits began on a Friday, with Unit members, only, performing a complete count of the overstock section. The counting in the order section would begin on Saturday, using Unit, Clerical Unit and unrepresented personnel; the Unit employees showed the others what to do, to the extent the latter assisted in the warehouse. The only time that non-Unit employees counted inventory was during these audits and they performed no function other than to count and report the counts.

Office personnel – exactly who is not clear - would input the data obtained from the count. The program would produce a variance report, showing every discrepancy between the numbers in the records and the actual count, by case, dollar value and weight. Discrepancies were checked immediately in an attempt to rectify as many as possible – inaccurate count? wrong place in the warehouse? After the variance counts were completed, the information would be re-keyed into the computer while the rest of the employees took a break. When that was printed, Director of Finance Simanton would decide if another variance count were needed. Once Simanton concluded that the variance count was “close enough”, he terminated that portion of the audit and released the non-Unit employees. Most Unit employees remained - seemingly relatively briefly - to move equipment and clean up pallets. A final variance report containing approximately 250 pages was then brought to the ICC employee; he addressed the “medium” variances - above \$100, but less than the limit set by Simanton to terminate the audit - over the remainder of the weekend.

During this weekend of inventorying, outside auditors were present to audit the Employer’s inventory process. The auditors appeared on the inventory count days and randomly selected inventory items for the *auditors’* counts. They entered the warehouse, accompanied by Unit warehouse employees, and themselves physically re-counted the items selected for audit. The auditors counted, but the warehouse personnel guided them to the appropriate location, and performed any movement of pallets. The auditors also reviewed accounts payable, looked into accounts receivable activity, and reviewed purchase orders. The outside auditors worked independently from both the Finance and Warehouse departments, and reported back to the Employer’s corporate office. According to Simanton, this outside audit continued for a few days after the warehouse inventories ended. The function of the external auditors was to review, randomly, the accuracy/legitimacy of the reported counts, as well as all other financial paperwork.

ICC Schmirler worked part of his time in the produce area “to check for quality” and to check whether items could be returned to stock, or had to be removed from inventory, to be “thrashed”, or “salvaged”.<sup>6</sup> Schmirler spent about half his time handling salvageable product by selling the product to salvagers, returning items to stock, or donating the product to charitable organizations. He spent about 5% of his time going through all the returned items left on “the boards” in the disposition area. He also had a role in salvaging meat products, such as disposing of partial cases in as economical fashion as possible.

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<sup>5</sup> The record mentions “semi-annual” and “annual” audits. The distinction is not explained in the record – some items every six months, some once a year? Total inventories twice a year?

<sup>6</sup> It was unclear exactly what his produce quality-checking role was, since the produce QC personnel were responsible for checking the quality of incoming produce. Perhaps he had some role in produce salvage, or in produce rotation. Schmirler testified that Allensworth and Quinn - non-Unit employees – had handled produce salvage as part of their produce quality control positions.

He handled product rotation in the chill areas. Schmirler also had a role in product recall, including defective or mis-packed products. He would locate and segregate such items in the warehouse and count them. Bird worked a regular schedule of Monday to Friday from 7:00 a.m. to 3:30 p.m.; Schmirler, Monday to Friday from 6:00 a.m. to 2:30 p.m. The basic wage rate for the ICCs was \$18.36 an hour.

### **The FIA Change**

On March 12, 2002, Union representative Gene Blackburn received a letter from Simanton informing the Union that it had created the FIA position, but that it would not affect Unit positions at the facility. Blackburn replied on March 22 advising Simanton that that the Union considered the new position to be a Unit position. The exchange of correspondence led to a meeting between Blackburn and Simanton, Kenny and Elliott. They told Blackburn that the Employer was going to eliminate the periodic inventories, and that Allensworth and Quinn, the new FIAs, would perform inventory audits on a daily basis instead. Blackburn told the Employer representatives that Unit employees had always inventoried and counted product in the warehouse and that the FIA positions were properly within the Unit. They replied that the Employer did not want the FIAs to answer to the Unit Operations employees, for loss prevention reasons.

Both FIAs transferred to these positions from their positions in produce quality control, non-Unit positions. To date, there is no written job description for the FIA job. They are paid hourly, one earning \$14.97 per hour, and the other \$16.90. This is in the general range of most Unit personnel. They report directly to Dan Vargo, the Quality Control Manager - as they did in their former positions; he reports to Simanton, VP of Finance. The FIAs maintain offices upstairs in the main office of the facility, but spend the majority of their time in the warehouse performing physical counts of inventory and resolving variances. They do not perform any role in handling of product in the chain from receipt to picking to truck loading to delivery.

The inventory audits performed by the FIA employees are broken into two components: (1) random audits of assets, and (2) periodic audits of high volume and high value assets. Regarding random audits, each morning an asset list is printed by an FIA. That list contains assets that have been selected "by the computer" on a purely random basis for audit, items where there is no reason to suspect any inventory accuracy problem. The FIAs double-check the information recorded in the computerized inventory system - information previously entered into the system by the Unit warehouse and Clerical Unit employees as part of the distribution process - by a physical count the FIAs perform *themselves*. According to Simanton's testimony, when the FIA finds that the information entered in the system varies substantially from the physical inventory of the asset, the FIA has the discretion of interviewing every employee and manager that may have had contact with the asset to trace and reduce the discrepancy. If a large variance is discovered, the FIA is required to determine why the problem arose in the first place and develop a solution to prevent the problem from happening again.

The FIAs physically count both order and overstock section inventory. They perform the actual count, but do not utilize any warehouse equipment in doing so; if movement of inventory, beyond moving of individual cartons, were required for the count, a Unit person would perform that function. If an error in placement in the warehouse were found, they would inform Operations and they would correct the problem. The ICC still controls the

siting of inventory in the warehouse, not the FIA. For high volume<sup>7</sup> or high value items (such as meat), the procedures are largely the same, except that the items are not selected randomly, but rather by some sort of schedule. FIAs also audit receipts by the warehouse; the day after receipt of a shipment, counts are made to determine if there is any discrepancy between what should be in inventory and what is<sup>8</sup>. If there were a discrepancy, the FIAs would attempt to determine the cause, such as a mis-count the day before when the goods were received.

The record indicates that there are plans to increase the role of the FIAs in the future. They will be checking accounts payable and receivable documents and transactions, will assume a greater investigatory role in determining the cause of mis-counts they discover, and will have a role in bringing forth problems discovered and suggesting changes not only concerning record accuracy, but also regarding general operational matters they may observe. This is an evolving process with no fixed schedules or plan.

The purpose of the creation of the FIA positions was multiple: 1) To eliminate the need for the internal periodic inventories; 2) to eliminate the need for auditing of the periodic inventories by outside auditors; 3) to provide greater theft deterrence by "insiders" by having regular and/or random audits, performed by a separate chain of command.

The periodic inventories have been eliminated. Once the new FIA system has been verified one last time, the outside auditors will no longer need to be present for purposes of determining the accuracy of the inventory records, although there will be other financial audit functions they will continue to perform. In the Employer's view, under the old system, the accuracy of the Unit-generated inventory balances, as set forth in the inventory records, and adjusted day-to-day as purchases were received and goods sold, were checked and verified ("reconciled") for accuracy only on one particular day, i.e., inventory day. This was accomplished by the periodic count and the outside auditor's review of the accuracy of that counting process. Now the count is verified on a continuous basis by the FIAs, eliminating the audited inventory. The Unit still makes their same counts and entries into the system as goods are received and shipped. The FIAs make their random checks and their scheduled checks for high value or high turnover items. That continuing process, in the Employer's view, substitutes for the outside *auditor's* check of the inventory records. [Auditors will still be present for verifying the accuracy of office transactions.]

Of course, not every item is checked every day or week. If the audit selection is truly random, it would follow that some items might never be selected for verification. Still, there is continuous checking, with the opportunity to find a problem early on, rather than not until the next inventory. The regular counts of high value<sup>9</sup> items and the random nature of other counts provide a deterrence factor relatively absent under the old system. It is obvious that delay in discovery enhances the possibility of undiscovered pilferage. Random counts make it possible that a theft *could* be discovered the very next day. Frequent counts similarly enhance the possibility of early discovery.

One of the FIAs still substitutes one day weekly in her former, unrepresented position, performing produce quality control functions.

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<sup>7</sup> The record does not reflect any examples of "high volume" products or why they warrant special attention.

<sup>8</sup> This is a re-check, since certainly the receiving employee counted the goods as they were off-loaded.

<sup>9</sup> I.e., theft-worthy.

There was testimony that FIAs have assumed some aspects of Schmirler's ICC position. It was said that FIAs are involved in handling product recalls, in that they identify the specific goods that have the recalled lot number. The "audit people" have a Unit person move the pallets of product to a particular area, where the "FIA" sorts the cases, for return to inventory, or disposal. There was one example given, and that turned out to be a mis-identification: it was the new quality control person (unrepresented) who was now performing this aspect of what had previously been Unit work, not the FIA.

There was another similar example, regarding outdated merchandise in the chill area. There an "audit" person was checking "pull" dates, and selecting outdated items, which they stacked for removal by a Unit forklift driver. However, clarification showed this particular work was generally performed by the (new) QC person, who the witness felt was "like" an FIA. Further, this selection work had historically been performed by the unrepresented QC personnel in the produce area.

There was testimony that on one occasion FIA Allensworth "started" sorting some product that had had been damaged by a defective fire sprinkler in the frozen food counter; it poured water onto the product, the water froze. This historically was an ICC function. When Schmirler arrived, he separated the damaged from un-damaged product, while Allensworth counted and recorded the respective categories. Allensworth was performing the aspect as part of an insurance claim.

In summary, then, on this aspect of alleged lost Unit work involving "bad" product, such work in the produce chill area was always non-Unit work. In the non-produce chill area, it perhaps is now being performed by the QC person, or a particular FIA when she fills in for that person once weekly. In the frozen food area, the sole testimony shows that the Unit person still sorts, while the FIA now counts. In the dry area, it *may* be that the FIA now selects and counts, while the Unit person moves the goods. All other salvage work is still done by the Unit ICC. The record was fuzzy concerning whether these instances were aberrations, or a genuine change.

The old periodic inventory counts have now been made obsolete by the FIA counts. The former inventories will no longer be performed. This has resulted in some loss of work twice (apparently) yearly to Unit personnel. Only the counting aspect of the inventory has been lost; the actual moving of merchandise, when necessary as part of the FIA audits, is still performed by Unit persons. That *tallying* aspect of the previous inventories historically was performed by *all* employees - Unit, Clerical Unit and unrepresented. The new auditing method will also make it unnecessary to have outside auditors present for verifying the audit (after one last, upcoming review); however, they will still conduct audits to verify office records, such as accounts payable or receivable.

Other than the changes described above, the creation of the FIA has had no impact on the Unit. There are still the same number of Unit positions and hours. *All* work associated with receiving, storing, selecting, internal transportation, loading and delivery is still performed exclusively by the Unit. With the exceptions delineated above - periodic inventories and to some extent disposition of "bad" merchandise - all aspects of the ICC work in particular and Unit work generally are still performed exclusively by the Unit. Some of the limited aspects of ICC "bad" product work lost have been lost to Quality Control persons, *not* to the FIAs.<sup>10</sup> Some of the lost inventory tally work has been lost by the Clerical Unit and unrepresented employees.

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<sup>10</sup> In other words, that is "another" issue.

## Parties' Positions

The Union claims that the disputed work is the same function as that historically performed by the Unit - counting is counting. The Unit has always in one way or another counted inventory, on a periodic basis and also on a day-to-day basis, for various purposes. Moreover there is a clear community of interest between the FIAs and the Unit: same kind of work (counting), same work location, same common rules and work conditions, similar pay range.

The Employer claims that while the FIAs count, as do the Unit persons, the counts have a different function. Day-to-day counting by Unit persons was and is ultimately directed towards getting product to the customer. It is part of the distribution process. Unit employees - really just the ICCs - were hunting for missing product that was *supposed* to be available, to fill customer orders, or to deal with ordered product that was not on the trucks when the driver arrived at the customer site. They also verified some counts of "outs" or "near-outs" as part of the distribution process. The day-to-day counting performed by the FIAs is not directed toward that customer service objective, but rather toward the overhead function of maintaining accurate accounting and other financial records, ultimately to determine actual profitability. A second major purpose is to limit opportunities for insider theft (deterrence), partly by having the inventory verifications made independently of the operations employees and their supervisory hierarchy, partly by making the search for shortages unpredictable, partly by making them frequent for certain items. A third objective was to save the cost of conducting the periodic inventories, including the supervision of the inventories by the outside auditors.

## Analytic Framework

A UC proceeding is a proper forum "for resolving ambiguities concerning the unit placement of individuals who come within a newly created classification". *Developmental Disabilities Institute, Inc.*, 334 NLRB No. 143 (2001), slip op., p. 2; *Union Electric Co.*, 217 NLRB 666 (1975). "The Board has followed a restrictive policy in finding accretion because it forecloses the employees' basic right to select the bargaining representative." *Towne Ford Sales*, 270 NLRB 311 (1984), at 311.

In cases where, as here, the unit is defined in terms of job classifications (not in terms of job functions<sup>11</sup>), there are two tests to be applied, in sequence. First, one looks at whether the new classification is "performing the same basic functions as a unit classification historically had performed." *Premcor, Inc.*, 333 NLRB No. 164 (2001), slip op. p. 2. If so, the "new classification is properly viewed as *remaining* in the unit rather than being *added* to the unit by accretion. Id. [Emphases added.]

If the *Premcor function* test is not met, then one must apply a traditional accretion analysis, examining the community of interest factors. If the new employees could stand as a separate appropriate unit, then they *cannot* be accreted. Rather, a question concerning representation is found to exist, which must be resolved by election. If they "have little or no separate group identity and thus cannot be considered to be a separate appropriate unit and ... share an *overwhelming* community of interest with" the unit, *then* they will be accreted. *Compact Video Services*, 284 NLRB 117, 119 (1987), quoting *Safeway Stores*, 256 NLRB 918,918 (1981). (Emphasis added). In making these community of interest assessments - noting that there are normally some factors that go

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<sup>11</sup> E.g., "Jurisdiction of the union begins with the markup of the copy and continues until the material is ready for the printing press ....". In such cases, a different analysis is used. See *The Sun*, 329 NLRB 854 (1999), at 854.



one way and some the other - one must balance the two sets of circumstances, but the most critical factors are separateness of supervision and degree of employee interchange. *Towne Ford Sales*, 270 NLRB 311, 311-12 (1984).

### **Premcor Test<sup>12</sup>**

We turn then to the *Premcor* test, i.e., are those in the new classification performing the same *functions* that the Unit employees have always performed? The Union argues that counting is counting, thus they are performing the same function. I do not interpret the word “function” that broadly. From a review of *Premcor*, plus *Brocton Taunton Gas Company*, 174 NLRB 969 (1969) and *Developmental Disabilities Sepra*, I conclude that “function” means the role that one plays in the process that the Unit performs, the purpose. Thus, if unit employees shovel raw material into hoppers as part of the production process, the fact that a new employee classification of ground maintenance employees is added, who shovel snow, or shovel soil for landscaping purposes, does not mean they must be added to the unit because they all have the same “shoveling” function. Rather, the test is what role the classification plays in, say, the production process, and whether that role is now performed by others - by identical means, or by some technological advance, such as computerization, that still accomplishes the same purpose.

Thus in the instant case, it is to no avail for the Union to argue that the Unit has historically counted things and so do the FIAs. That Unit counting, in my view, is a different function from the FIA's. The Unit's counting contributes to the distribution process directly, while the FIA's counting is an overhead function, a pure accounting function that plays no direct role in getting product to the customer. Moreover, the Unit's counting is directed to reacting to observed customer service problems in getting product to the customer: Where is the item that is supposed to be in Aisle 2, slot B-4? Is the product missing from the customer's order because it is still in inventory and never left the warehouse, or did the driver leave it at the wrong stop? The FIAs do not get involved in that distribution problem solving. Their function is to check inventory randomly, not in response to a customer service problem, with a purpose of, day-by-day, keeping inventory records accurate, and creating deterrence to theft.

It might be argued that the *Unit* performed the periodic full-count inventories, and that now that function has been taken over by the FIAs, who merely perform it in a different manner. I don't believe this argument prevails. First, the FIAs, when performing their audit function, do not perform any work beyond actually *counting* the merchandise. They do not use equipment to access the goods; if they need such assistance, they call upon a Unit person. The non-tally work elements of the inventory process are still performed exclusively by the Unit. Similarly, if a discrepancy is found in the audit between where a product is and where it should be, it is up to the Unit make the necessary changes. The most the FIAs perform in product handling is sliding a case on a pallet, to check behind it for a void.

Second, the periodic inventory function was not *exclusively* a Unit function. Indisputably, the Unit was heavily involved overall. However, the *tallying* function of the inventory process - as distinguished from the work of moving product or providing guidance on product location, and otherwise facilitating the actual count. - was not a purely Unit function. This aspect of the work was performed by anyone and everyone who

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<sup>12</sup> I reject the Employer's argument that the petition is premature. There is no showing that the instant factual situation is but a continuous, planned glide to a near-term finality. Rather, the correct situation is a plateau, with future changes inchoate and largely undefined as to fact and timing.

worked for the Employer at the Portland facility: Unit, Clerical Unit and unrepresented personnel. Those non-Unit personnel involved in warehouse activity - as opposed to the office portions - performed only the tallying function.

For all of these reasons, I conclude that the FIAs have not taken over the Unit's function in the inventory process, within the meaning of *Premcor*. Thus, the *Premcor* test is not met and an accretion analysis must be made.

### **Standard Accretion Analysis**

We turn then to the accretion/community of interest consideration. The FIAs have separate first and second level supervision. They report to the QC supervisor who reports to the V-P of Finance, a chain of command totally separate from the warehouse/operations personnel, who report through a separate chain, ultimately to the Operations V-P. Unit personnel are devoted to product "delivery", getting product to the customer. FIAs perform an administrative, overhead, accounting function. There is absolutely no interchange between the FIAs, and the ICCs or anyone else on the Operations side, for obvious reasons. The Unit personnel work all manner of hours, while the FIA work daytime hours only. Unit personnel are largely devoted to equipment operation (driving trucks and forklifts) or manual labor (pulling merchandise and stacking on pallets), while Unit personnel do neither. In addition, FIAs have a function that is adverse to the Unit in the sense that they perform a policing/deterrence<sup>13</sup> function with respect to the Unit. They check not only the Unit's work, but also their integrity. This is more than a quality control person checking the accuracy of unit personnel's production in a P&M unit, a context where the Board has given little weight to the potential conflict of interest of the two groups. The FIA's have an office, in the general office area, where they spend about 50% of the time.

There are similarities, to be sure. All are paid in the same general pay range. To the extent that there are differences in benefits, this is due to the fact that one set is generated by collective bargaining, while the other by Employer fiat. The differences reflect as much the fact of representation, rather than differences caused by different levels of skill or training or other major work differences. Unit employees and FIAs share a common break room and perhaps restrooms. They spend a substantial portion of their workday out in the warehouse; thus, there must be frequent opportunities for contact, although the record does not really reflect much actual contact and interaction. In this regard, it must be noted that the FIAs have a different role, which they can largely perform without interacting with the Unit, and this work is deliberately separated from Unit work.

There is a closer resemblance between the work of the ICCs and the FIAs than to any other Unit position. They both look for stuff in the warehouse and count it. Beyond that, the resemblance largely ends; different supervision, different purpose. The ICCs look for items seemingly missing and may, or may not, count them when found. The FIAs look for things presumed to be in place, and always count.

It would be difficult to argue that the FIAs could alone constitute a separate appropriate unit, since they share supervision with other, non-represented personnel in the QC department and supervision at the second level with Office Clerical Unit employees. However, they share at least as much affinity with the rest of that *unrepresented* department as they do with the Unit personnel and could just as easily be argued to be an accretion to Clerical Unit.

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<sup>13</sup> Certainly they are not guards.

## **Conclusion**

Accordingly, I conclude, based on the entire record, but most heavily on the two most critical factors - separateness of supervision and lack of interchange – as well as lack of overall integration and distinctly different role in the business process, that the FIAs are not an accretion to the Unit. Accordingly, I shall dismiss the petition.

## **ORDER**

**IT IS HEREBY ORDERED** that the petition filed herein be, and it hereby is, dismissed.

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by October 15, 2002.

**DATED** at Seattle, Washington, this 1<sup>st</sup> day of October 2002.

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